

JOINT USE AGREEMENT

BETWEEN

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

AND

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Dated October 15 1976

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AGREEMENT

This AGREEMENT, made this 15th day of October, 1976, between NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, a New York corporation with a principal place of business in Boston, in the Commonwealth of Massachusetts, and PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE, a New Hampshire corporation with a principal place of business in Manchester, in the State of New Hampshire, hereinafter sometimes called "the parties"

## WITNESSETH THAT:

WHEREAS, the parties desire to provide for the joint use of poles and anchors when and where such joint use will be of mutual advantage;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties do, for themselves, and their successors and assigns, mutually covenant and agree as follows:

Scope of  
Agreement

Article 1. This Agreement shall be in effect in the areas in the States of New Hampshire and Vermont in which both parties have the right to operate on the effective date hereof and thereafter.

Permission for  
Joint Use

Article 2. Each party permits the joint use of any of its poles and anchors now standing or hereafter erected within said areas to the extent that the poles and anchors have been or are brought under this Agreement, under the terms and conditions of this Agreement and of Intercompany Operating Procedures adopted pursuant to this Agreement, except that each party reserves the right to exclude from joint use poles and anchors which are, in its judgment, necessary for its sole use or its use together with attachments of municipalities or other third parties referred to in Article 4.

Rights and  
Obligations:  
IOP's

Article 3. To carry out the purpose of this Agreement to facilitate the joint use of poles, the Agreement set forth the rights and obligations of the parties with respect to such use, including without limitation their rights and obligations with respect to the following matters:

- A. Allocation of ownership and allocation of space
- B. Division of costs and expenses
- C. Acquisition of joint ownership
- D. Construction standards
- E. Performance of work
- F. Payment and billing
- G. Custody and maintenance areas
- H. Changes in character of circuits
- I. Termination of joint ownership
- J. Administration of Agreement

Certain of the basic contractual provisions of this Agreement are not set forth in the body of the Agreement, but are set forth with operational or administrative procedures in Intercompany Operating Procedures (IOP's). IOP's in effect at any time shall be attached hereto and shall be a part of this Agreement. The IOP's in effect or taking effect upon the effective date of this Agreement are listed in Schedule A attached hereto.

The provisions of IOP's in effect at any time shall be subject to review upon the written request of either party given to the other. Amendments to IOP's, including elimination of any effective IOP's or addition of new IOP's, shall be made effective by written instrument signed on behalf of each party by a duly authorized officer of such party or by some other representative designated herein or by such officer by written notice to the other party.

Sole  
Agreement

Article 4. This Agreement and the Intercompany Operating Procedures constitute the entire agreement between the parties respecting joint ownership and joint use of poles and anchors; provided however, the parties have jointly contracted and may in the future jointly contract with community antenna TV companies and other companies for joint use or space rental of poles covered by this Agreement and nothing herein contained is intended to prevent such third-party contracts.

Construction  
Standards

Article 5. Construction and maintenance of all poles, guys and anchors and of all attachments of both parties under this Agreement shall conform to the applicable provisions of the latest edition of the National Electrical Safety Code and to all applicable governmental requirements.

Municipal  
Space

Article 6. Upon each of the poles covered by this Agreement, a reasonable amount of space shall, if so desired by municipal authorities or deemed desirable by the parties hereto, be reserved for the municipal fire alarm and police signal wires or cables, owned by the municipality and used exclusively for municipal purposes.

Attachments

Article 7. When temporary construction on jointly owned poles does not conform to the requirements of Article 5 and is unsafe or restrictive to one of the parties, the parties will cooperate in correcting the unsafe or restrictive conditions. Irrespective of which party may be financially responsible for the costs of any transfer or rearrangement of any attachments, each party, through its own personnel or through its agents or contractors, shall place, maintain, rearrange and transfer its own attachments.

Electrical  
Interference

Article 8. Each party shall so construct, operate and maintain its facilities that electrical interference with the facilities of the other is avoided or minimal and shall, at its own expense, correct any such electrical interference caused by its facilities which is more than minimal, when it occurs.

Work  
Responsibility

Article 9. The work of installation, replacement, relocation or removal of new or existing jointly owned poles, guys and anchors shall be divided equitably between the parties. The division of this work shall be by the establishment of maintenance areas in which one party or the other is assigned the responsibility for such work.

Payment of  
Taxes

Article 10. Each party shall be responsible for payment of a portion of the taxes and other governmental charges relating to the jointly-owned property covered by this Agreement in proportion to its ownership thereof, except that any such taxes or charges imposed upon the property solely because of the ownership or use of that property by only one of the parties shall be paid by that party.

Bills and Payment  
for Work

Article 11. Within 60 days after the completion by one party of work for which the other party is to be partially or wholly responsible financially, the party that did the work shall render to the other party an itemized statement of charges showing the cost of the work, and if found to be correct, the charges shall be promptly paid.

Existing Rights of  
Other Parties

Article 12. If either of the parties hereto has, prior to the execution of the Agreement, conferred upon others, not parties to the Agreement, by contract or otherwise, rights in or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting said rights or privileges, and either party hereto shall have the right, by contract or otherwise, to continue and extend such existing rights, or privileges; it being expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party shall be treated as attachments belonging to the grantor, and the rights, obligations and

liabilities hereunder of the grantor in respect to such attachments shall be the same as if it were the actual owner thereof. Attachments made by third parties under community antenna TV contracts or under other contracts executed by both parties to this Agreement, and fire and police signal attachments of municipalities or other public authorities, shall not be considered to be covered by this Article.

Assignment of  
Rights

Article 13. Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges and franchises, or to lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage, or in case of such lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be; and provided, further, that subject to all of the terms and conditions of this Agreement, either party may permit any corporation conducting a business of the same general character as that of such party, and owned, operated, leased and controlled by it, or associated or affiliated with it in interest, or connected with it, the use of all or any part of the space reserved hereunder for such party on any pole covered by this Agreement for the attachments used by such party, in the conduct of its said business; and for the purpose of this Agreement, all such attachments maintained on any such pole by the permission as aforesaid of either party hereto shall be considered as the attachments of the party granting such permission, and the rights, obligations and liabilities of such party under this Agreement, in respect to such attachments, shall be the same as if it were the actual owner thereof.

Liability for  
Damages

Article 14. Whenever any liability is incurred by either of the parties or both for damages resulting from injury to the employees or for damage to the property of either party, or for injuries to other persons or property, arising out of the joint use of poles, anchors or guys whether or not jointly owned, or due to the proximity of the wires and fixtures of the parties attached to jointly used poles, anchors, or guys, the liability for such damage, as between the parties hereto, shall be as follows:

(a) Each party shall be liable for injuries to persons other than its own employees or for damage to property other than its own caused in whole or in part by its negligence, or by its failure to comply at any time with the specifications referred to in Article 5 of this Agreement, or by its failure to perform its obligations hereunder, when so caused without any negligence or any such failure by the other party. The party that is liable agrees to indemnify, hold harmless and defend the other party on account thereof.

(b) Each party shall be liable for all damages for injuries to its employees or damage to its property caused solely by its negligence or by its failure to comply with the specifications referred to in Article 5 of this Agreement or by its failure to perform its obligations hereunder or caused by the concurrent negligence or failure of both parties and agrees to indemnify, save harmless and defend the other party on account thereof. When either party hereto, or its insurer, shall make any payments to an employee or to his relatives or representatives on account of an injury caused in a manner described in this Article, in conformity with (1) the provisions of any workmen's compensation act or any act creating a liability in the employer to pay compensation for personal injury to an employee by accident arising out of or in the course of the employment whether based on negligence on the part of the employer or not or (2) any plan for employee's disability benefits or death benefits now established or hereafter adopted by the parties hereto or either of them, such payments shall be construed to be damages within the terms of this paragraph.

(c) In the case of damages resulting from injuries to persons other than employees of either party, or from damage to property not belonging to either party that are caused in part by each party, whether through such party's negligence or through its failure to comply with the specifications referred to in Article 5 of this Agreement or by its failure to perform its obligations hereunder or are due to causes which cannot be traced solely to the sole negligence of one party or failure of one party to comply with said specifications or perform its obligations hereunder, each party shall be liable for said damages in proportion to the amount of negligence attributable to it and each party shall indemnify, hold harmless and defend the other party for its proportionate share of said damages.

(d) Where the claimant desires to settle any such claim upon terms acceptable to one of the parties hereto but not to the other, the party to which said terms are acceptable may, at its election pay to the other party one-half (1/2) of the expense which such settlement would involve and thereupon said other party shall be bound to indemnify, save harmless and defend the party making such payment from all further liability and expense on account of such claim or in any way connected therewith.

(e) Where a jointly used pole is to be replaced or abandoned and one of the parties has removed all its construction from the old pole, it shall notify the other party thereof in writing. If the other party fails to remove its attachments from the old pole or fails to remove the old pole within sixty (60) days from the receipt of such notice, it shall become solely responsible for said pole, and shall be solely liable for injury to persons not in the employ of either of the parties hereto, or of their contractors, and for damage to property not belonging to either of the parties hereto, if such injury or damage occurs after the end of the 60 days.

Liability and  
Damages Jointly  
Owned but not  
Jointly Used

Article 15. Whenever any liability is incurred by either party or both for damages for injuries to the employees or damage to the property of either party or for injury or damage to other persons or their property arising out of the use of poles, anchors, or guys jointly owned but not jointly used, the liability for such damages, as between the parties hereto, shall be as follows:

The party using the poles, anchors, or guys agrees to indemnify, save harmless and defend the party not using the poles, anchors or guys from any liability in connection therewith, except liability arising out of the negligent erection or maintenance thereof by the party claiming indemnity and liability arising out of the location thereof.

Contractors Engaged  
By Either Party

Article 16. All contractors and their employees engaged by either party to do any work in connection with jointly used poles or attachments thereon shall, as between the parties hereto only and not for the benefit of any third party, be considered the agent of the party employing them.



- Default                      Article 17. Whenever either party is in default with respect to any work that is its responsibility under this Agreement and has not cured the default within 60 days after receipt of written notice thereof from the other party, the other party may have such work performed and shall be reimbursed promptly for all its costs by the defaulting party.
- Term of Agreement            Article 18. This Agreement shall take effect upon the day and year first above written and shall be in effect for an initial period of two years from the effective date and shall continue thereafter until terminated by either party by giving not less than one year's notice in writing to the other party, provided however, that the provisions of this Agreement relating to poles jointly owned shall nevertheless continue in full force and effect as to such poles until joint ownership thereof is terminated.
- Waiver of Portions of Agreement      Article 19. The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, or its waiver of the same in any instance or instances, shall not be construed to be a general waiver or relinquishment of any of such terms or conditions, but the same shall be and remain at all times in full force and effect.
- Ownership of Poles, Guys and Anchors      Article 20. Title to poles shall be determined as follows, and in each case one-half undivided interest as tenant in common shall pass from the party erecting the pole to the other party:
- (a) With respect to any existing pole that the parties have installed prior to the effective date hereof and determined is to be jointly owned, but for which the addendum has not been completely processed, title shall pass, or be considered to have passed, upon payment of the bill relating to the pole.
  - (b) With respect to poles that are installed after the effective date of this Agreement and that the parties shall have determined are to be jointly owned, title shall pass upon the completion of the work of setting the pole in place.
  - (c) With respect to solely-owned poles that are now in existence or that are installed in the future and are subsequently determined should be jointly owned, title shall pass upon payment of the bill.

(d) With respect to poles that were previously jointly owned by one of the parties hereto and a third party whose interest has been acquired by the other party hereto, and that are not covered by any addendum between the parties hereto, it is hereby agreed that each party has held and now holds a one-half undivided interest therein as tenant in common.

(e) With respect to jointly owned poles that one party desires to abandon pursuant to this Agreement, title shall pass from the party terminating its interest to the remaining party upon the completion of the removal of all the attachments of the party that is terminating its ownership.

(f) When a pole is removed from service and both parties have determined to abandon it, the last party to remove its attachments shall sell or otherwise dispose of the pole and for that purpose each party hereby grants to the other the right to convey its interest to any third party or parties.

(g) Reference to "poles" in this Article 20 shall be considered to include both poles and anchors.

Cancellation of  
Existing Agreement

Article 21. The Agreement dated July 1, 1937, between the parties including supplements and amendments thereto, relating to jointly owned and jointly used poles, guys, and anchors heretofore entered into between the parties to this Agreement within the territory covered by this Agreement is hereby terminated as of the effective date of this Agreement except as to liabilities already accrued and all of the poles covered under that agreement are hereby brought under this Agreement and hereafter shall be subject to the terms and conditions hereof.

Establishing  
Joint Use

Article 22. If, in specific situations, joint ownership in accordance with the provisions of this Agreement is unattractive to one of the parties, even though joint ownership may be desirable or economical from the overall standpoint, nothing herein shall preclude the establishment of joint use on such terms or such basis (including a rental basis in lieu of joint ownership) as may be agreed upon in writing by designated representatives of the parties hereto.

Notices;  
Designated  
Representatives

Article 23. (a) Notices under this Agreement shall be sent by mail, postage-prepaid, to the parties at the following addresses or to such other address as either party may, from time to time, designate in writing:

New England Telephone and Telegraph Company  
1228 Elm Street  
Manchester, New Hampshire 03101  
Attention: Outside Plant Staff Supervisor-Joint Lines

Public Service Company of New Hampshire  
P. O. Box 330  
Manchester, New Hampshire 03105  
Attention: R. J. Harrison, Vice President

(b) The designated representatives of the parties at the effective date of this Agreement are the following:

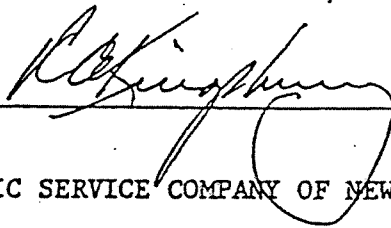
John Milan - General Outside Plant Manager-New Hampshire  
New England Telephone and Telegraph Company

John C. Duffett, Director of Division Operations  
Public Service Company of New Hampshire

IN WITNESS WHEREOF, each party has caused this Agreement to be signed in its name and its corporate seal to be affixed by an officer thereunto duly authorized as of the day and year first above written.

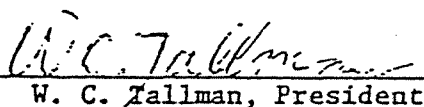
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY

By



PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

By

  
W. C. Tallman, President

